

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

IGNACIO RIVERA)	
Claimant)	
)	
V.)	
)	
CARGILL MEAT SOLUTIONS CORP.)	
Respondent)	Docket No. 1,058,861
)	
AND)	
)	
AIG ASSURANCE COMPANY)	
Insurance Carrier)	

ORDER

STATEMENT OF THE CASE

Claimant requested review of the February 9, 2015, Award entered by Administrative Law Judge (ALJ) Pamela J. Fuller. The Board heard oral argument on June 9, 2015. Stanley R. Ausemus of Emporia, Kansas, appeared for claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for respondent and its insurance carrier (respondent).

The ALJ found claimant's accidental injury arising out of and in the course of his employment on November 14, 2011, resulted in a 5 percent permanent partial impairment to the body as a whole.

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant argues he is entitled to a functional impairment of 10 percent to the body as a whole.

Respondent maintains the Award should be affirmed.

The sole issue for the Board's review is: what is the nature and extent of claimant's disability?

FINDINGS OF FACT

On November 14, 2011, claimant sustained injury at respondent when he slipped on a greasy floor. Claimant testified he felt immediate pain in his upper and lower back as a result. Claimant reported the incident to respondent and received medical treatment in the form of injections, chiropractic treatment and medication.

Dr. Pedro A. Murati, a licensed physician, evaluated claimant on February 6, 2013, at claimant's counsel's request. Claimant complained of low back pain that radiates down both legs and causes difficulty sitting, standing, and sleeping. After reviewing claimant's available history, medical records, and performing a physical examination, Dr. Murati determined claimant has bilateral SI joint dysfunction and low back pain with signs of radiculopathy. Dr. Murati recommended permanent restrictions. He further noted claimant's "current diagnoses are within all reasonable medical probability a direct result from the work-related injury that occurred on . . . 11-14-11 during his employment with [respondent]."¹ Dr. Murati testified it is more probable than not claimant will require future medical treatment.

Using the *AMA Guides*,² Dr. Murati placed claimant in Lumbosacral DRE Category III for a 10 percent whole person impairment related to his low back pain with signs of radiculopathy. He opined the work-related accident of November 14, 2011, was within all medical certainty and probability the prevailing factor in the development of claimant's condition.

Dr. Vito J. Carabetta examined claimant on March 28, 2014, for purposes of a court-ordered independent medical evaluation. Claimant complained of constant, variable, unimproved aching pain in the midline lumbosacral region, which worsened with lifting and prolonged sitting and standing. Claimant also complained of constant, equal bilateral sciatica continuing down to his feet. After reviewing claimant's available history, medical records, and performing a physical examination, Dr. Carabetta concluded claimant has chronic lumbar sprain and bilateral sciatica. He recommended permanent restrictions.

Using the *AMA Guides*, Dr. Carabetta opined:

[Claimant] has subjective sciatica, but there is no objectivity in terms of any possible issues of actual radicular involvement. As we utilize the preferred DRE approach and reference Table 72 on page 110, his presentation is felt to be most appropriately fitting with a Category II situation, and therefore a 5% whole person

¹ Murati Depo., Ex. 2 at 5.

² American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

impairment rating would apply. This would be fully apportioned to the injury date that later occurred with this employer on November 14, 2011.³

Claimant testified he continues to suffer constant pain in his back and both legs. Claimant stated he has problems sleeping and must constantly change positions throughout the day. Claimant continues to work for respondent.

ANALYSIS

At the oral argument of this matter before the Board held June 9, 2015, the parties were first made aware that a joint stipulation of medical records, which included the medical records of Drs. Alexander Neel and Alok Shah, was not received into the evidentiary record before the ALJ. The parties agreed it was their intention for the ALJ to review this evidence prior to making an award of compensation. The parties filed a Stipulation of Medical Records with the Board on June 23, 2015, which included the medical records of Drs. Neel and Shah. That filing has been received and accepted by the Board, and the attached medical records are now a part of the evidentiary record.

For reasons unknown by all involved, the ALJ was not allowed the opportunity to adequately review and evaluate this claim because of the missing evidence. As such, this matter is remanded to the ALJ for reevaluation of the case with the inclusion of the previously excluded evidence.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Pamela J. Fuller dated February 9, 2015, is remanded with directions to reevaluate the claim, including the evidence included in the Stipulation of Medical Records filed with the Board on June 23, 2015.

IT IS SO ORDERED.

³ Carabetta IME at 5.

Dated this _____ day of July, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
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Pamela J. Fuller, Administrative Law Judge